

LABOUR DEPARTMENT

The 18th March, 1986.

No. 9/7/86-Lab./2442.—In pursuance of the provisions of Section 17 of the Industrial disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s Sooraj Steel Industries Ltd., Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 116 of 84.

Between

SHRI HARENDER KUMAR, WORKMAN, AND THE MANAGEMENT OF M/S. SOORAJ STEEL INDUSTRIES LTD., SONEPAT.

Shri R.S. Lakra, A.R. for the workman.

Shri D.C. Gandhi, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Harender Kumar and the management of M/s. Sooraj Steel Industries Ltd., to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 24667-72 dated 13th July, 1984 :—

Whether the termination of services of Shri Harender Kumar is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Leader for the last 1½ years on monthly wages of Rs. 300 but the respondent choose to terminate his services orally on 25th November, 1983 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act.).

3. In the reply filed by the respondent, preliminary objection taken is that since the petitioner has not completed 240 days of actual work with the respondent, he is not entitled to the benefits of section 25F of the said Act. On merits, it is alleged that the petitioner was employed w.e.f. 1st November, 1983, who worked upto 23rd November, 1983 and thereafter started absents from his duties and as such, his name was struck off from the roll of workmen as per the Certified Standing Orders of the respondent company.

4. On the pleadings of the parties, the following issue was settled for decision on 14th December, 1984:—

1. Whether the termination of services of Shri Harender Kumar is justified and in order ? If not to what relief is he entitled ?

5. The petitioner appeared as his own witness as WW-1 and the management examined Shri Rajvir Singh Dehiya as MW-1.

5. Heard.

6. On behalf of the petitioner Shri Lakra contended that the respondent concern is notorious in not maintaining proper rolls of the workmen employed to by-pass the provisions of industrial laws and as such, there are no reasons to disbelieve the statement of the workman that he has worked with the respondent for 1½ years on the date his services were terminated orally. On the request of the Authorised Representative of the workman, I, sent for the roll of the workmen employed by the respondent prior to 25th November, 1983, the date on which the petitioner is alleged to have started absents from his duties. In the preceding one year, the name of the workman does not figure in the roll of the workmen. Further more, the management has placed on record an application for appointment filed by the petitioner and the order passed upon the same. The said application is dated 28th October, 1983 and order of appointment was passed upon the same on the said date appointing the petitioner as casual labour/helper w.e.f. 1st November, 1983. So, there can be no scope for controversy that the petitioner was in the employment of the respondent prior to 1st November, 1983. On the request of the petitioner again an other reference bearing number 145 of 80 answered by this Court on 19th December, 1984 was called for. On the basis of the evidence adduced by the respondent in that case, the Court was constrained to observe that the respondent was guilty of suppressing certain facts from the Court in that case. From these observations, it cannot be held that in this case also the respondent can be held guilty of the same charges. The respondent has also placed on record the muster roll of the workman Ex. M-3 for the month of November 1983. The petitioner started

absenting from his duties w.e.f. 23rd November, 1983 as such, the petitioner has not put in 240 days of actual work with the respondent as his employment did not extend even after one month and so, the petitioner is not entitled to the benefits as envisaged under section 25F of the said Act, because his termination cannot be said to be 're-trenchment' as defined in section 2(oo) of the said Act.

7. In the light of my foregoing discussion, the petitioner does not deserve any relief. The reference is answered and returned accordingly with no order as to cost.

B.P. JINDAL,

Dated : 3rd February, 1986.

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 116-84/359d, dated : 10th March, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/7/86-6Lab./2443.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s Om Weaving Factory, 41/4, Bahalgarh Road, Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 69 of 82.

Between

SHRI BAL RAM GUPTA, WORKMAN AND THE MANAGEMENT OF M/S. OM WEAVING FACTORY,
41/4, BAHALGARH ROAD, SONEPAT.

Shri Bahadur Yadav, A.R. for the workman.
Shri R.C. Sharma, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Bal Ram Gupta and the management of M/s. Om Weaving Factory, 41/4, Bahalgarh Road, Sonapat to this Court, for adjudication,—vide Haryana Government Gazettee Notification No. ID/SPT/31/82/19719, dattd 27th April, 1982:—

Whether the termination of service of Shri Bal Ram Gupta was justified and in order ? If not to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the petitioner is that he was employed with the respondent as a Scale/Calendar Folder since 1st March, 1977 on monthly wages of Rs. 350 and that the respondent choose to terminate his services without any prior notice or payment of any retrenchment compensation w.e.f. 10th March, 1981, because the petitioner was an active unionist and as such, he has been waging a relentless battle for the cause of the workmen employed in the Textile Units at Sonapat and that on 12th December, 1980 a general demand notice was raised by the workmen and given to the respondent without any response.

3. In the reply filed by the respondent, preliminary pleas projected are that the workman alongwith other workmen resorted to and actively instigated others to go for stay-in tool down strike on 31st January, 1981 and thereafter the workman went on strike and also indulged in other violent illegal activities, though strike was prohibited by the Government of Haryana,—vide notification dated 10th March, 1981 but the workman and many others did not report for duty.

4. On the pleadings of the parties, the following issues were framed on 25th October, 1982 ;—

1. Whether the reference is bad for reason stated in additional paras 1 & 2 of the written statement; If so to what effect?
2. Whether the termination of service of Shri Bal Ram Gupta was justified and in order? If not, to what relief is he entitled ?

5. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri Prahalad Singh, Head Clerk, office of the Labour-cum-Conciliation Officer, Sonapat and MW-2 Shri Suresh Kumar its partner. The workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

Issue No. 1

7. The learned Authorised Representative of the respondent Shri R. C. Sharma frankly conceded that the present reference can not be held to be bad in law, in view of the preliminary pleas No. 1 and 2 taken by the management. He further agreed that plea No. 2 is a mixed question of law and facts and can be more appropriately disposed of while deciding issue No. 2. So, this issue is answered against the management.

Issue No. 2

8. To prove this issue, the management examined MW-1 Shri Prahalad Singh, Head Clerk, office of the Labour-cum-Conciliation Officer, Sonapat, who produced documents Ex. M-1 to Ex. M-9 from the record of his office. He also placed on record Ex. M-10.—*vide* which the strike resorted to by the workmen was prohibited by the Government of Haryana. MW-2 Shri Suresh Kumar, who stated that the work force of the respondent resorted to stay-in tool down strike in the month of January, 1981 and later on they went on complete strike. The management affixed notices Ex. M-2 to M-8 on the notice board and so Ex. M-11 and further despatched letters, Ex. M-12 and M-13 to the workers by post. He further stated that the workman failed to report for duty so, his name was struck off from the rolls of workman. He also stated that in the premises of M/s. Om Weaving factory, there are other three being run under the name and style of M/s. Jagdish Textile and M/s. Shankar Textile.

9. The workman appeared as his own witness as WW-1 and stated that he was employed with the respondent as a Calendar/Scale Folder since 1st March, 1977 on monthly wages of Rs. 350 and that the work force of the respondent raised a general demand notice on 12th December, 1980 but the respondent resorted to illegal lock out w.e.f. 31st January, 1981 and that on 9th March, 1981 the Government of Haryana declared the strike by the workmen as illegal and that he went to the factory premises on 9th March, 1981 to resume his duties but he was not allowed to do so, against which he filed a complaint with the Tribunal, which proved of no avail and as such, he was constrained to raise the demand notice on 13th November, 1981 and that the letters Ex. M-2 to M-4, M-7, M-8 and M-10 to M-13 were never received by him and that before terminating his services the respondent did not pay any retrenchment compensation and no domestic enquiry was held.

10. The learned Authorised Representative for the management Shri R.C. Sharma forcefully contended that since the claimant did not resume his duty after prohibition of strike by the Government of Haryana,—*vide* gazette notification dated 9th March, 1981, the management was justified in terminating the services under the Industrial Employment (Standing Orders) Punjab (Haryana First amendment) Rules, 1959. From the said rules a pointed reference was made to rule 20(1)(k). The said rule contains acts and omissions which shall be taken as mis-conduct. One of the clause is that any workman striking work illegally shall be guilty of mis-conduct. The plea of termination of services of the workman in the end of March, 1981 was taken by the management to prove its point that after the strike was prohibited by the Government of Haryana,—*vide* gazette notification dated 9th March, 1981, the management was justified in terminating the services of the workman on 31st March, 1981 for wilful absence and also for mis-conduct as provided in the standing Orders referred to above. The plea of the management that the workman did not resume his duty after prohibition of strike by the Government of Haryana is trumped up one, because in case, the workman would not have been keen to resume his duty, I see no reason for him to raise a demand notice on 13th November, 1981, which he did. So, I am inclined to go with the workman that the management deliberately prevented him from resuming his duty after the strike was prohibited by the Government of Haryana and thereby terminated the services in flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947. So, I find the termination illegal and void *ab initio* and not sustainable in the eyes of law and as such the same is set aside and the workman is ordered to be reinstated forthwith with continuity of service and with full back wages. This reference is answered and returned accordingly. There is no order as to cost.

Dated the 7th February, 1986.

B. P. JINDAL
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endst. No. 69-82/360, dated the 10th March, 1986:

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.